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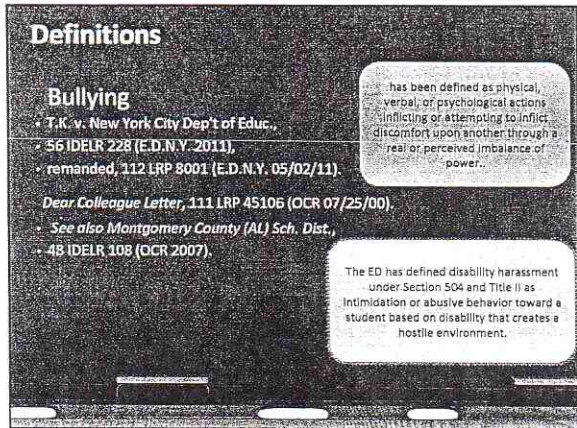
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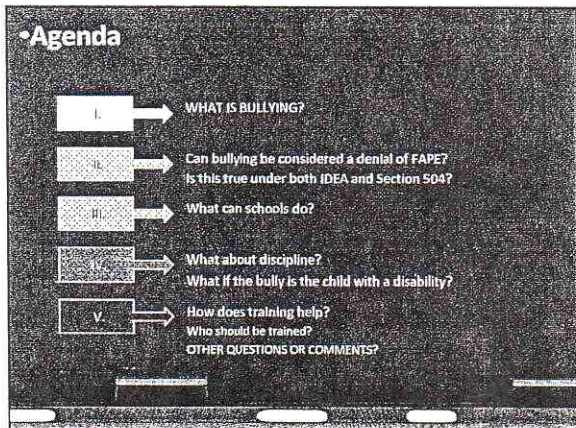
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### •Can Bullying Cause a Denial of FAPE?

• Three U.S. Circuit Courts of Appeal have noted that bullying can be a basis for denial of FAPE. OCR noted the same in *Dear Colleague Letter*, 111 LRP 45106 (OCR 07/25/00).

• To constitute bullying as discrimination in violation of Section 504 or the ADA, the harassment must be based on the child's disability. However, that may not be the case when it comes to establishing a denial of FAPE under the IDEA

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### •What effect can bullying have on FAPE

• In *Shore Regional High School Board of Education v. P.S., 41 IDELR 234* (3d Cir. 2004), the 3d Circuit found a denial of FAPE based on the likelihood that a proposed placement would subject a student with ED to continued bullying because of his perceived effeminacy



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• In *M.L. v. Federal Way School District*, 105 LRP 13966, 394 F.3d 634 (9th Cir. 2005), the 9th Circuit stated that if a teacher is deliberately indifferent to the teasing of a child with a disability and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied FAPE



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• The 7th Circuit in *Charlie F. v. Board of Education of Skokie School District 68*, 24 IDELR 1039 (7th Cir. 1996), held that at least in principle, relief might be available where a teacher invited students to list their complaints about a classmate, which led to his loss of confidence, self-esteem, fistfights, and disruption of his educational progress



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• Consider all of the events surrounding the bullying



• Some bullying incidents may amount to disability or other discrimination and require a response that goes beyond a district's usual approach to teasing, taunting, or hazing among peers.

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• Districts must identify whether a reported incident amounts to unlawful discrimination and, if so, respond in a manner that accords with Section 504 and Title II, Title VI (which prohibits discrimination on the basis of race, color, or national origin), or Title IX (which prohibits sex discrimination).

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